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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
841 Chestnut Building
Philadelphia, Pennsylvania 19107

SUBJECT: Explanation of proposed second De Minimis Settlement - C & R Battery Co., Inc. Site

DATE: AUG 2 9 1995

FROM: William Early
Acting Regional Counsel (3RC00)

Thomas C. Voltaggio
Director Hazardous Waste Management Division

TO: W. Michael McCabe
Regional Administrator

This memorandum concerns a proposed **second** de minimis settlement for the C & R Battery Co., Inc. Site in Chesterfield County, Virginia, involving three de minimis parties.

On September 26, 1994 EPA entered into a de minimis settlement with 66 de minimis responsible parties for this Site. Reference is made to the memo dated September 26, 1994, Explanation of Proposed De Minimis Settlement, for the first de minimis settlement, which outlines the factors the Region used to determined that the settlement meets certain statutory requirements. The September 26, 1994 memo is hereby incorporated into this document.

During the first de minimis settlement negotiation, two of the three settling parties, Vinton Scrap & Metals Company and Steve A. Stump, d/b/a Stump's Scrap Yard, raised an inability to pay claim. However, due to the timing of their claims, they could not be analyzed in time for the first de minimis settlement. Subsequently, Vinton Scrap & Metals Company withdrew its inability to pay claim and determined that it would pay its full volumetric share plus premium, plus the Federal Natural Resource Trustees cost share.

An EPA Financial Analyst reviewed Mr. Stump's financial status. This review was based on an examination of the U.S. Individual Income Tax Returns of Mr. Stump for 1989 through 1993, inclusive. This information was supplemented by Financial Statements, including a statement of assets, liabilities and equity for the business for period ended December 31, 1993. The information was provided by Mr. Stump pursuant to a CERCLA § 104(e) information request. Furthermore, the EPA Financial Analyst personally observed Mr. Stump's business during a field

call on November 7 & 8, 1994. The analyst concluded that neither Mr. Stump nor Stump's Scrap Yard are in a position to financially contribute to the Tonolli[1] or C&R Battery de minimis settlements. Therefore, EPA is accepting payment of $1.00 from Mr. Stump for the de minimis settlement.

The third settling party, Gilbert Freedman, d/b/a Ace Junk Company is being allowed to join in the second de minimis settlement because of a misunderstanding during the first settlement process. Mr. Freedman is President of Leesburg Iron & Metal Co., who was a respondent in the first de minimis settlement. During the first negotiation process, Mr. Freedman did not express his interest to settle for Ace Junk Company, a now defunct sole proprietorship. When payment was requested for the first settlement, Mr. Freedman expressed an interest to settle for the amount owed for Ace Junk Company.

Please sign below if you concur with the de minimis analysis outlined above as well as the attached memo.

I CONCUR WITH THE DE MINIMIS ANALYSIS SET FORTH IN THIS MEMO.

W. Michael McCabe
Regional Administrator

8/30/95
Date

[1]Mr. Stump is also a responsible party at the Tonolli Superfund Site.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
841 Chestnut Building
Philadelphia, Pennsylvania 19107

SUBJECT: Explanation of proposed De Minimis Settlement - C & R Battery Co., Inc. Site

DATE: SEP 2 6 1994

FROM: Neil Wise (3RC20) Neil Wise
Acting Regional Counsel*

Thomas C. Voltaggio (3HW00) for Ellen Tunnell
Director Hazardous Waste Management Division

TO: Peter H. Kostmayer (3RA00)
Regional Administrator

This memorandum concerns a proposed de minimis settlement for the C & R Battery Co., Inc. Site ("Site") in Chesterfield County, Virginia, involving 66[1] de minimis parties and documents the factors the Region used to determine that the settlement meets certain statutory requirements.

Section 122(g) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. § 9622(g), authorizes EPA to enter into de minimis settlements with parties which arranged for the disposal of wastes at a Site when: 1) both the volume and toxicity of those wastes are minimal in comparison with that of other Potentially Responsible Parties ("PRPs"); 2) the settlement involves only a minor portion of the response costs; and 3) the settlement is practicable and in the public interest.

Based on the June 2, 1992, guidance, "Methodology for Early De Minimis Waste Contributor Settlements Under CERCLA Section 122(g)(1)(A)", OSWER Directive No. 9834.7-1C, and the December 20, 1989, guidance, "Methodologies for Implementation of CERCLA Section 122(g)(1)(A) De Minimis Waste Contributor Settlements", Oswer Directive No. 9834.7-1B, ("De Minimis Guidance"), the Region has the discretion to set the de minimis cut-off at any

*Both Marcia Mulkey (Regional Counsel) and Michael F. Vaccaro (Deputy Regional Counsel) are recused from the C & R Battery Co., Inc. Site; thus, Neil Wise is the Acting Regional Counsel for purposes of this Site.

[1]One party, Lake City, Inc., executed two signature pages because it is a successor by merger to two companies that sold batteries to the Site and are listed separately on the Volumetric Ranking Summary (Bedford Recycling, Inc. and Lake City Scrap, Inc.).

percentage or volume the Region believes is reasonable provided the Region complies with the protocols set forth in the above referenced de minimis guidances. The De Minimis Guidance clarifies the criteria for such settlements as follows:

1) The settlement involves only a minor portion of the site response costs;

2) The amount of hazardous substances contributed by each individual party is minimal (2.0% of total waste at the site);

3) The toxic or other hazardous effects of the substances contributed by the parties is minimal in comparison to the remaining parties; and

4) The settlement is practicable and in the public interest.

I. BACKGROUND

The Site is located in Chesterfield County, Virginia and consists of an approximately 12-acre tract of land where a battery breaking operation was conducted from approximately 1972 to 1985. An emergency removal action was conducted by EPA at the Site in the summer of 1986. The Site was placed on the CERCLA National Priorities List ("NPL") in 1987. In 1988 EPA commenced a Remedial Investigation and Feasibility Study ("RI/FS") pursuant to the National Contingency Plan. In January of 1990 the RI/FS was completed and a Record of Decision was issued in March of 1990 which included the excavation of surface and subsurface soils containing lead above the 1,000 mg/kg action level, treating them with a cement/pozzolan-based or similar stabilization process, and then disposing the soils in an offsite landfill. In March of 1992, EPA issued a unilateral administrative order for performance of the remedial action at the Site to seventeen parties; only one party chose to comply with the order, Bell Atlantic - Virginia, Inc. (f/k/a The Chesapeake & Potomac Telephone Company of Virginia, Inc.)(hereinafter "C&P Telephone"). In August of 1992, C&P Telephone filed a Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), action against 139 parties, including the United States.

II. DISCUSSION

1. The Settlement involves only a minor portion of the site response costs.

The de minimis parties would pay $595,797.64 (23.5%) of the $2,532,209 past and estimated future costs.

2. The amount of hazardous substances contributed by each individual party is minimal.

None of the de minimis parties contributed more than a half of one percent of the total volume of batteries sent to the Site. In order to calculate a formula for the de minimis settlement, EPA gathered information about the volume of batteries sent by each PRP to the Site through: 1) Responses to CERCLA Section 104(e) information request letters; 2) C & R Battery Co., Inc. receiving reports and statement invoices; and 3) Canceled checks from two of C & R Battery Co., Inc.'s financial institutions. During the information-gathering process, PRPs identified the volume of batteries that they sent to the Site and, in most cases, provided the supporting documentation. The C & R Battery Co., Inc. receiving reports and statements, which were obtained from Charles Guyton, the former president of C & R Battery Co., Inc., identified the "seller" of the batteries and the volume of the batteries sent to the Site. The canceled checks from C & R Battery Co., Inc.'s financial institutions identified the "payee" or seller of the batteries to C & R Battery Co., Inc., the amount received by the payee for the batteries, and identified "batteries" and/or "junks" in the memo portion of the check. In a majority of the cases, the memo portion of the check also referenced the "P.O." or purchase order number of the C & R Battery Co., Inc. receiving report and statement.

Despite EPA's efforts to collect as much information as possible, the documentation remained spotty, providing very complete information for the years 1980 through 1983, and incomplete information for the years 1972 through 1979, 1984 and 1985. However, EPA determined that although C & R Battery Co., Inc. operated for nearly 14 years, the information that was available to EPA regarding each PRPs volume would be used as the universe of information.

In calculating each PRPs volumetric share, each transaction between C & R Battery Co., Inc. and the PRPs had to be evaluated. An area that proved to be complicated concerned the allocation of volume when two or more parties were involved in a transaction with C & R Battery Co., Inc. This occurred when one party was the actual "generator" of the batteries and the other party was a "broker". Based on information received from industry experts, a broker acted as a middleman between the generator of the batteries and the Site. In this case, a broker would arrange with C & R Battery Co., Inc. to pick up a load or loads of batteries at a particular facility that had generated a load or loads of batteries. C & R Battery Co., Inc. would pay the broker for such batteries, and the broker would pay the generator, taking a percentage of the profit for its part in the transaction. The Region consulted with Headquarters de minimis experts in the former Office of Waste Programs Enforcement, and with the Department of Justice ("DOJ"). EPA guidance dated

February 20, 1991, "Guidance on Preparing Waste-In Lists and Volumetric Rankings for Release to PRPs Under CERCLA", OSWER Dir. No. 9835.16, ("Waste-In Guidance") was also reviewed. Based on the guidance, EPA determined that where two or more parties were responsible for the same shipment(s) of batteries to the Site, the volume would be attributed to both parties. EPA made no attempt to allocate the responsibility for such volume among the parties involved in such shipments. These transactions were shown on the Volumetric Ranking Summary by listing the parties involved in such shipment(s) on the same line with one another.

During its calculation of the de minimis volumetric formula, EPA discovered that a number of PRPs had gone out of business, or could not be located, or were deceased. Accordingly, EPA proportionately redistributed those non-viable PRPs' volumes among the remaining viable PRPs in order to calculate a revised volumetric percentage for each viable PRP. EPA then applied the revised percentage for each viable PRP to its past and future costs. This provided each viable PRPs' cost share.

In determining the premium, EPA, in conjunction with the former Office of Waste Programs Enforcement and DOJ took several factors into consideration in selecting a 92% premium. Those factors included: 1) the Agency's potential inability to recover costs from other sources and the fact that some PRPs may have an inability to pay their volumetric share; 2) litigation risks; and 3) risks associated with not having the standard re-openers. EPA's settlements typically include standard re-openers which include re-openers if new information and/or new site conditions are discovered. These standard re-openers are not included in this proposed de minimis settlement because the Site has been cleaned. It was also determined that the 92% premium would be applied to all costs outstanding, past and future estimated costs. The June 2, 1992, De Minimis Guidance (OSWER Directive 9834.7-1C) states that premiums should be sufficient to compensate the Agency for risks associated with ". . . potential inability to recover response costs from other sources." Because the C & R Battery Co., Inc. Site is unique in that the remedial action was conducted and funded by a PRP, and the majority of EPA's outstanding costs are past costs, it was determined that a premium on all costs would be appropriate.

After reviewing the original percentages of all PRPs, EPA, in conjunction with DOJ, determined that a cut-off for those PRPs that would be offered a de minimis settlement would be less than 0.5% or less than 400,000 pounds. This cut-off was chosen for two reasons. First, this percentage is less than 2 percent of the waste attributable to each of the PRPs. Second, there was a natural break point between Klotz's Inc.(405,832 pounds or .5322%) and Metal Shippers (373,663 or .4900%).

EPA determined that it would allow parties that had an inability to pay their volumetric share to settle with EPA within the context of the de minimis settlement upon a financial analysis conducted by EPA. It was determined through a complete financial analysis, that three parties could not pay their full volumetric share:

a) Metalmart, Inc. - settling for $1.00.

b) James H. Street - settling for $1.00.

c. All-Scrap Salvage, Inc. - settling for $500.00.

3. The toxic or other hazardous effects of the substances contributed by the parties is minimal in comparison to the remaining parties.

The primary component of the spent batteries sent to the Site by the proposed de minimis parties and other parties was lead.

4. The settlement is practicable and in the public interest.

A settlement with the proposed de minimis parties is practicable and in the public interest. Such a settlement will help replenish the Fund, provide equitable relief for the smaller waste contributors and narrow the focus of EPA's enforcement action to the major contributors of waste at the Site.

Please sign below if you concur with the de minimis analysis outlined in this memo.

I CONCUR WITH THE DE MINIMIS ANALYSIS SET FORTH IN THIS MEMO.

9/26/94

Peter H. Kostmayer
Regional Administrator

Date